

## **Minutes of the twelfth meeting of the Family Law Subcommittee of the Legislative Council (provisional translation)**

On February 22, 2022, the twelfth meeting of the Family Law Subcommittee of the Legislative Council was held at the Ministry of Justice (in person and online). Nearly all the members and non-voting members attended the meeting. The Chairman, Prof. OMURA Atsushi, presided over the meeting.

Having completed its first-round discussions, the Subcommittee commenced second-round discussions on the issues on divorce and related systems. During the twelfth meeting, the rules on matters necessary for parent-child relations and custody of a child after divorce were discussed.

The Subcommittee began by examining the establishment of rules that would clarify the legal relationships between parents and a child, regardless of their parental authority. Discussions were held on whether or not (i) the obligation to give top priority to the interests of the child and (ii) the obligation to take care of minors should be clearly stated as rules associated with the legal status of parents. In general, many of the members considered the establishment of rules on the legal status of parents positively, though not clearly stipulated under current law. However, as for the details of the rules, opinions for and against specific points were presented, such as whether parents should be clearly obliged to "give top priority to the interests of a child" at all times, whether parents who do not live with a child should be guaranteed the opportunity to check the child's status of care, and whether parents should be obliged to provide financial and other support to their children who have attained the age of majority.

Subsequently, the relationships between a person having parental authority, a custodian, and other parents were considered. Then, discussions were held on (i) the authority and obligations of a person having parental authority, (ii) the authority and obligations of a person having parental authority as well as a custodian when a custodian is designated, and (iii) the authority and obligations of a parent who has neither parental authority nor custody but actually takes care of a child. However, consideration of rules concerning a person having parental authority and a person having the right to custody of a child after divorce will be dealt with at the next meeting.

Discussions were also held on (i) the arrangement of matters necessary for custody of a child when multiple parents (natural parents and adoptive parents) are involved; (ii) the designation of third party custodians other than parents (e.g. relatives and foster parents) and visitation with a child; and (iii) the clarification of factors to consider when the family

court determines custodians and visitation. For (i), it was suggested that such a legally complex situation could have a negative impact on the child. Regarding (ii), while some pointed out the practical need for custodians, others considered that it is not clear whether a stable child-rearing environment will be secured even if the legal status of a third party is protected by establishing rules and pointed out procedural issues caused by involving a third party or a child in the process. Concerning (iii), opinions were expressed that further consideration should be given to the appropriateness of each factor proposed and that other factors should also be taken into consideration.

Finally, the Subcommittee organized discussion points for a statute to be provided on what matters should be arranged for child custody in cases of divorce. Discussions were held on whether divorced parents in uncontested cases should be required to take post-divorce parenting classes, as well as on the contents and methods of the post-divorce parenting classes, in order to ensure access to legal information necessary for child rearing after divorce. Many positive opinions were expressed about the establishment of such post-divorce parenting programs.

At the next and subsequent meetings, the remaining issues for this meeting will be examined, as well as the procedural rules for arrangement of matters necessary for custody of a child and rules for determination of matters concerning a child after divorce of parents.

※These minutes are the responsibility of the Secretariat of the Committee, which has provided this summary of the outcome of the meeting as a preliminary report in English.